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97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-658

TO AMEND THE ACT OF OCTOBER 19, 1973 (87 STAT. 466), RELATING TO THE USE OR DISTRIBUTION OF CERTAIN JUDGMENT FUNDS AWARDED BY THE INDIAN CLAIMS COMMISSION OR THE COURT OF CLAIMS

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 3731]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 3731) to amend the Act of October 19, 1973 (87 Stat. 466), relating to the use or distribution of certain judgment funds awarded by the Indian Claims Commission or the Court of Claims, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

The amendments are as follows:

1. On page 3, line 9, after the words "SEC. 2" and before the word "Section", insert "(a)".

2. On page 3, at the end of line 16, strike the quotation mark and add the following sentence: "Such plan or plans shall be limited to urgent needs arising from extenuating circumstances and shall accord with general principles governing administration of trust funds of minors and legal incompetents, including a requirement for strict accounting for expenditures."

3. Section 2 be amended by adding at the conclusion of the preceding amendment on page 3, between line 16 and 17, a new subsection (b) as follows:

> (b) Clause (5) of section 3(b) of said Act is hereby amended by striking out "warrant otherwise" and inserting in lieu thereof the following: "warrant otherwise: *Provided*, That in the development of such plan the Secretary shall survey past and present plans of the tribe for economic development, shall consider long range benefits which might accrue to the tribe from such plans, and shall encourage program-

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ming of funds for economic development purposes where appropriate.

4. Beginning on page 3, line 17, through page 4, line 11, delete all of the language and insert in lieu thereof the following:

SEC. 3. (a) Subsection (a) of section 5 of said Act is amended by deleting "either House adopts a resolution" and inserting in lieu thereof "a joint resolution is enacted".

(b) Subsection (b) of section 5 of said Act is amended by deleting "adoption of a resolution" and inserting in lieu thereof "enactment of a joint resolution".

(c) Sec. 5 of said Act is amended by adding the following new subsections at the end thereof:

"(c) Within the sixty-day period and before the adoption of any resolution disapproving a plan, the Secretary may withdraw or amend such plan: *Provided*, That any amendments affecting the division of an award between two or more beneficiary entities shall be subject to the consent of these entities as provided in section 2(d) of this Act. Any such amended plan shall become valid at the end of a sixty-day period beginning on the day such amendment is submitted to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan as amended.

"(d) Once a plan is withdrawn before the end of a sixty-day period, the Secretary has until the expiration of the original one-year deadline to resubmit a plan to Congress. Such a plan shall become valid at the end of a sixty-day period beginning on the day such new plan is submitted to the Congress, unless during such sixty-day period, a joint resolution is enacted disapproving such plan.

"(e) Upon the introduction of the first such resolution of disapproval in either the House of Representatives or the Senate, the sixty-day period shall be recomputed from the date of such introduction and shall not again be extended."

5. On page 4, beginning on line 14, delete all of the language through page 5, line 2 and insert in lieu thereof the following:

SEC. 7. None of the funds which—

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act, or

(2) on the date of enactment of this Act, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to the date of enactment of this Act,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or members would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

PURPOSE

The purpose of H.R. 3731 is to amend the Act of October 19, 1973 (87 Stat. 466) to allow the Secretary of the Interior additional time to submit certain plans for the distribution of judgment funds appropriated by the Congress pursuant to judgments of the Indian Claims Commission or the Court of Claims. The bill also makes various other amendments to the Act to enhance the implementation of its provisions.

BACKGROUND AND NEED

In 1973 Congress entacted the Judgment Fund Distribution Act (87 Stat. 466; 25 U.S.C. 1401 et seq.) to provide a system for distribution of judgment funds awarded to Indian tribes or groups by the Indian Claims Commission or the Court of Claims. This Act requires the Secretary of the Interior, after consultation with affected Indian tribes or enties, to develop a plan for the use and distribution of Indian judgment funds and submit such plan to the Congress within 180 days after funds are appropriated to pay an award. The Department of the Interior is authorized to request an extension of time of 90 days in which to submit the plan. Once the plan is submitted, either House of Congress has 60 legislative days in which to reject the plan. In the absence of an affirmative rejection by either House of Congress, the plan becomes effective at the end of the 60 legislative day period.

Prior to enactment of the 1973 statute, the annual Interior Department Appropriations Act, beginning in 1960, required that separate legislation had to be enacted to authorize the distribution of funds awarded to Indian tribes. This resulted in the House and Senate Interior Committees spending an inordinate amount of legislative time considering and passing separate bills for each award of the Indian Claims Commission or the Court of Claims.

Since enactment of the 1973 Act, Interior has enountered continuing problems in meeting the statutory deadlines for submission of distribution plans. In the 96th Congress it was necessary to pass special legislation (S.J. Res. 108) to validate the effectiveness of some 62 plans that had been untimely submitted to Congress since 1973. A 1979 decision of the U.S. District Court for the District of Columbia (*Seminole Tribe of Florida* v. *Andrus*) had declared such late submissions to be invalid. In this Congress the Administration proposed amendatory legislation to provide greater time latitude to the Interior Department in the submission of distribution plans.

There are presently some 83 separate awards or judgments awaiting development of a plan by the Department of the Interior or legislation as may be necessary. In addition, there are approximately 56 cases pending before the Court of Claims which could be subdivided into a greater number resulting in an increased number of judgments which would require development of a distribution plan or legislation. Seven of these cases are nearing settlement.

The Department of the Interior identified five judgments or awards which will require legislation irregardless of the passage of the amendments in this bill: Sioux Nation (Black Hills); Western Shoshone; Seminole; Pembina Chippewa; and Hopi. In addition, independent witnesses identified two other awards falling within this

category: the Six Nation award, particularly the Tonewanda Seneca, and in the future the Oneida claim. The Department stated that there will be several other awards, not yet decided by the Court of Claims, that will fall into the category of requiring legislation when finally adjudicated. The criteria employed by the Department in identifying these claims revolves around pending collateral litigation, strong feelings that there should be a land settlement, factionalism within the beneficiary entities respecting distribution of the award, or inability of competing entities to agree on a division of the award.

LEGISLATIVE HISTORY

H.R. 3731 was introduced by Congressman Morris Udall and was referred to the House Committee on Interior and Insular Affairs. A hearing was held on July 14, 1981, and the bill was reported out of Committee on November 18, 1981. The bill was acted upon by the House of Representatives on the Consent Calendar. It was referred to the Senate Select Committee on Indian Affairs on December 15, 1981. Hearings were held by the Select Committee on July 21, 1982, and the bill, with amendments, was ordered reported out by the Select Committee at a markup session on August 18, 1982.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on August 18, 1982, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 3731 as amended.

AMENDMENTS

The Select Committee on Indian Affairs, at its business session on August 18, 1982, ordered H.R. 3731 be reported with a series of amendments. These amendments are set forth in full at the beginning of this report. Their purpose is explained in the Section-by-Section Analysis that follows.

SECTION-BY-SECTION ANALYSIS

Section 1.—Section 1 of H.R. 3731 amends Section 2 of the Act of October 19, 1973 (87 Stat. 466) by repealing Section 2 of that Act and inserting in lieu thereof a new Section 2 composed of five subsections.

Subsection (a) allows the Secretary of the Interior to have up to one year after Congressional appropriation of funds in satisfaction of an award or judgment to submit a plan to Congress for the use and distribution of such funds.

Subsection (b) allows the Secretary of the Interior to submit plans within one year after enactment of this legislation for distribution of judgment funds awarded and appropriated before enactment of this Act. There are presently some 83 separate awards of judgments awaiting development of plans by the Department of the Interior for which funds have already been appropriated and are on deposit in the Department of Treasury. This subsection will enable the Department of the Interior to develop plans for the majority of these awards without necessity of seeking legislation.

Subsection (c) directs the Secretary of the Interior to submit legislation to the Congress in any case where he determines the circumstances do not permit preparation and submission of a plan. As noted in the Background and Need section of this report, the Secretary has identified which will require submission of legislation because of pending collateral litigation, strong feelings that there should be a land settlement, factionalism within the beneficiary entities respecting distribution of the award, or inability of competing entities to agree on a division of the award.

Subsection (d) directs the Secretary of the Interior to obtain the consent of affected tribes or groups to a formula for division of funds whenever he has to divide funds between two or more affected entities.

Subsection (e) allows the Secretary of the Interior to ask for an extension of time of 180 days whenever it is necessary in order to submit a plan to the Congress.

Section 2(a) of H.R. 3731, as amended by the Committee, amends Section 3(b)(3) of the 1973 Act by allowing funds held in trust for minors or legal incompetents to be spent for the health, education, welfare or emergency situations, in accordance with a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved. The Committee amendment makes clear that such plan or plans shall be limited to urgent needs arising from extenuating circumstances. The purpose of the Committee amendment is to assure that such plans shall accord with general principles governing administration of trust funds of minors or legal incompetents, and that this provision is not intended to authorize general, unlimited or unsupervised access to such funds by parents or guardians.

Section 2(b) to add a proviso to Section 3(b)(5) of the 1973 Act to require that the Secretary, in the development of use and distribution plans, survey past and present economic development plans of the tribe, evaluate long range benefits that might accrue to the tribe from retention of judgment funds for tribal program purposes, and actively encourage programming of such funds for such economic development purposes. The Committee notes that the 83 awards presently pending before the Department of the Interior total in excess of $422 million. Adequate programming of these funds offers tribes a significant opportunity for "self-help" in establishment of economic development programs which can be of long range benefit to the tribes and their members. The Hearing Records which have accompanied the distribution plans submitted to this Committee are generally devoid of any indication that Interior personnel have in any way recommended, advocated, or in any way even raised questions at tribal meetings which would encourage utilization of judgment funds for program purposes. It is the intent of this subsection to require a more active role by Interior personnel in encouraging use of these funds in a manner that will benefit the tribes over the long run.

Section 3 of H.R. 3731 amends Section 5 of the 1973 Act to eliminate the provision in the 1973 Act that authorizes either House of the Congress to disapprove a plan developed by the Department of the Interior, and to provide clarification of permissible actions by the Congress and the Executive in the administration of this Act.

Subsections 3 (a) and (b) amend the provisions of the 1973 Act which permit either House of Congress to disapprove a plan submitted by the Department of the Interior and substitutes language which provides that such plans may only be disapproved by a joint resolution. This eliminates the "one House veto" provision to which the Executive objects.

Subsection 3(c) makes clear that the Secretary may withdraw a plan once it has been submitted to the Congress, and that an amended plan may then be submitted, the sixty-day period beginning on the day the amended plan is submitted.

Subsection 3(d) provides that if the Secretary should withdraw a plan, an amended plan may be submitted at any time within the original one year period.

Subsection (e) provides that upon the introduction of a resolution of disapproval as provided in subsections (a) and (b), the sixty-day period shall be tolled and the sixty-day period shall be recomputed from the date upon which the first such resolution is introduced in either House of Congress. To bring finality to the period of Congressional consideration, it is provided that the period may not again be extended.

Section 4 of H.R. 3731 amends Section 7 of the 1973 Act to provide that the first $2,000.00 of any shares of per capita funds shall be exempt from consideration as income and resources for purposes of determining eligibility.

Cost and Budgetary Considerations

The Cost estimate for H.R. 3731, as amended, as provided by the Congressional Budget Office, is setforth below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 13, 1982.

Hon. William S. Cohen,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 3731, a bill to amend the Act of October 19, 1973 (87 Stat. 466), relating to the use or distribution of certain judgment funds awarded by the Indian Claims Commission or the Court of Claims, as amended and ordered reported by the Senate Committee on Indian Affairs, August 18, 1982.

Based on this review, it appears that no significant cost will be incurred by the government as a result of enactment of this legislation. The bill would extend the time available to the Secretary of the Interior to prepare and submit to the Congress plans for the distribution of awards made by the Indian Claims Commission or the Court of Claims. In addition, the bill provides additional instructions and procedures for developing acceptable plans for distribution of those awards.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 3731 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following communications from the Department of Justice setting forth executive agency recommendations relating to H.R. 3731.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., February 16, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This presents the views of the Department of Justice on H.R. 3731, a bill to amend the Indian Judgment Funds Act, 25 U.S.C. § 1401 *et seq.* (Act). The Act was passed by the House of Representatives on December 15.

The Department of Justice strongly opposes enactment of the legislative veto provision of this Act.

H.R. 3731 permits the Secretary of the Interior to request an extension of the time in which he must submit certain plans to Congress, but such request will be "subject to the approval of both the Senate Select Committee on Indian Affairs and the House . . . Committee on Interior and Insular Affairs."[1] The Committee added a further legislative veto provision to § 5 of the Act, providing that the Secretary can withdraw and amend plans after submission to Congress, subject to a one-House veto of any amended plan.

The Department of Justice must strenuously object to this Act in its present form. The entire Act is dependent on and structured around legislative veto provisions which are clearly unconstitutional.[2] We believe that the Executive Branch must oppose bills of this nature, which are not only plainly unconstitutional but also seriously impair the authority and responsibility of the President and the Executive Branch.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) ROBERT A. MCCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

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[1] The Department of Justice is presently representing the Secretary of the Interior in litigation pending in the United States District Court for the District of Montana in which we are contesting the constitutionality of a provision of the Federal Land Policy and Mangement Act which gives to these same committees power which is analytically indistinguishable from the committee approval provision in the text above. Anything less than the most vigorous opposition to this provision in the instant bill could compromise our position in that litigation. That case, *Pacific Legal Foundation* v. *Watt*, is presently pending before the District Court on our motion for clarification and reconsideration.

[2] The illegality of provisions such as these has recently been established in the clearest terms by the United States Court of Appeals for the District of Columbia Circuit. *Consumer Energy Council of Acmerica* v. *Federal Energy Regulatory Commission*, No. 80–2184 (D.C. Cir. 1982). *See also Chadha* v. *Immigration and Naturalization Service*, 634 F. 2d 408 (9th Cir. 1980), *consideration of jurisdiction postponed until hearing on merits*, 102 S. Ct. 87 (1981).

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states as follows: It is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

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